BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of: Developing a Unified Intercarrier Compensation Regime	CC Docket No. 01-92, DA 06-1730

REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE CALIFORNIA PUBLIC UTILITIES COMMISSION

The People of the State of California and the California Public Utilities Commission (California or California Commission) respectfully submit these Reply Comments in response to the Federal Communications Commission's ("FCC") Public Notice seeking comments on the amendment to the Inter Carrier Compensation (ICC) reform proposal known as the "Missoula Plan"[1] in the above-captioned proceeding. The amendment was described in an *ex parte* letter filed on January 30, 2007, and corrected by another filing on February 5, 2007.[2]

[1] Missoula Plan or Plan is used interchangeably in the context of these comments.

[2] FCC, Public Notice. *Comments Sought on Amendments to the Missoula Plan Intercarrier Compensation Proposal to Incorporate a Federal Benchmark Mechanism*. CC Docket No. 01-92, DA 07-738. Released: February 16, 2007.

I. SUMMARY

California commends the Missoula Plan proponents for their diligent effort in crafting the latest amendment to the Plan known as the "Federal Benchmark Mechanism" (FBM) to address concerns raised by the early adopter states in connection with intercarrier compensation reform.

California also compliments the Missoula Plan proponents' efforts to help interested state commissions understand the component parts of the FBM and Restructure Mechanism (RM). Nevertheless, notwithstanding the proponents' efforts, California cannot endorse the latest amendment as it is contrary to the best interests of consumers. The proponents arrived at an outcome that is too complex and costly. It would shift cost recovery of the revenue loss resulting from access charge reduction to consumers through increases in the subscriber line charge (SLC) and the Universal Service Fund (USF) without assurances of offsetting benefits.

More specifically, the FBM's underlying assumption is flawed and as a result its implementation could potentially jeopardize the sustainability of the Universal Service Fund.

In addition, due to the broad complexity of the FBM and lack of specificity on how the FBM will be funded, administered, and implemented, California believes that further analysis and amendments should be made to the latest proposal. Moreover, because the numbers were based on the best publicly available information and do not reflect a comprehensive dataset of the industry, the RM for California and certain states may be understated.

Finally, California cannot support the latest amendment to the Plan as it ultimately does more harm than benefit to consumers.

II. DISCUSSION

A. The Missoula Plan Does Not Require Customer Savings Flow-Through

As indicated in our previous comments and reply comments to the above- captioned proceeding, filed on October 25, 2006 and January 31, 2007, respectively, the Commission cannot reemphasize enough that the FCC should flow-though 100% of the savings in intercarrier rates to the carrier's customers to remain consistent with the intent of the Missoula Plan. The flow-through of access charge reductions to customers becomes even more critical with the FBM because it adds $800 million in costs to consumers. Therefore, we respectfully suggest that the FCC require carriers to pass-through access reductions to their customers.

B. The Assumption Underlying the Proposed FBM Is Flawed and Results in an Unnecessarily Large Fund

When the Missoula Plan was issued for public comments in July 2006, the proponents proposed an estimated $200 Million early adopter fund ("EAF") to reduce the burden on states that have already taken action to reduce their intrastate charges ("early adopter states"). Subsequently, in its filing with the FCC on January 30, 2007, and corrected by another filing on February 5, 2007, the Missoula Plan proponents proposed the FBM (with a projected funding of $800 million) in lieu of the EAF, which targets new federal support to states that have the highest end-user rates. In addition, the FBM would reduce the burden on early adopter states by shifting more revenue recovery from the RM to end-user rates in states that have retained low end-user rates.

California is concerned, however, that the FBM no longer serves only early adopter states, but also provides support for states that have not reduced intrastate access charge. The FBM presumes high local rates and state universal service funds are the result of reductions in intrastate access charges.[3] As discussed by other commenters[4], this is a rebuttable presumption. There are a myriad of reasons unrelated to intrastate access charge reform for high local rates, including cost characteristics, market structure, and regulatory policies, to name a few.[5] Without documentation supporting the extent of intrastate access charge reductions, not only does the FBM fail to meet its stated objective of reducing the burden on only early

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[3] Supporting Comparability Through a Federal Benchmark Mechanism, filed February 5, 2007, (Federal Benchmark Mechanism) at pp.1- 2

[4] Virginia State Corporation Commission Comments at p. 8; CTIA at p.15

[5] Virginia State Corporation Commission Comments at p. 9

adopter states, but these states will also be required to subsidize local rates in non-early adopter states. Moreover, the lack of proof of access charge reform results in a bloated FBM and jeopardizes the long-term sustainability of the federal universal service program.

C. The $25 High Benchmark Is Unsubstantiated

Missoula Plan proponents have devised the FBM based upon a national residential "rate benchmark" to establish comparability among states. Nonetheless, many commenters[6] argued that no analysis or rationale was provided to support the $25 high benchmark rate. California concurs with many commenters[7] that a study should be conducted or further justification should be required to compare the reasonableness of residential rates among states or to otherwise support the high benchmark rate of $25.

D. The Missoula Plan Is Too Costly, Complex, And Understated

The Missoula Plan proponents now project that the EAF under this latest attempt to address ICC reform will rise from $200 Million to approximately $800 Million through the FBM. However, the FBM lacks the implementation procedures and processes needed for a viable program.

[6] Virginia State Corporation Commission Comments at p. 10; CTIA at p.4 and pp. 15-16; and Five State Members of the Mid-Atlantic Conference Regulatory Utility Commission Comments at p. 4.

[7] Virginia State Corporation Commission Comments at p. 10; and CTIA at pp. 15-16.

California concurs with Verizon[8] that the FBM proposal lacks specifics on how it will be implemented. The Plan's proponents provided no information as to (1) how the benchmark will be funded; (2) who will determine a state's entitlement to the fund; (3) whether there is an appeal process; and (4) whether states will be audited.

California also concurs with New York State Department of Public Service that the amendment does not provide sufficient information to allow interested parties to determine the financial consequences to subscribers and carriers.[9] In addition, absent detailed and supporting information regarding the underlying data utilized for each state, the numbers provided in the amendment may be not be accurate. Moreover, since both the FBM and RM amounts are based on the best publicly available information obtained by the proponents, which may not be actual data, there is an underlying concern that the numbers disclosed in the amendment may be understated. Based on California Commission staff calculations, the RM amount is understated by approximately 50% for California.

In addition, certain competitive local exchange carriers (CLECs), such as Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers), have expressed concerns over exactly how the proposed mechanism will apply to them. For

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[8] Verizon Comments at p.3

[9] New York State Department of Public Service Comments at page 4.

example, Mid-Rivers is making an assumption that the proposed end user charges are mandated for incumbent local exchange carriers, but optional for CLECs.

In light of the above discussions, the California Commission believes that the FBM is too costly because it would dramatically increase the USF and exacerbate the net contributor status of the ratepayers. Likewise, it is too complex due to lack of clarity and undefined parameters as discussed above. Therefore, California believes that (1) further analysis should be conducted whether the FBM is an appropriate option to reform ICC, and (2) further amendments should be made to address and clarify certain issues raised by interested parties, some of which are discussed in the aforementioned paragraphs. Alternatively, the proponents may wish to explore other proposals that are not as complex and difficult to implement and that will ultimately benefit consumers.

III. CONCLUSION

California understands that the ICC needs reform. However, the latest amendment to the Plan further increases its cost and complexity. The FBM and RM appear to negatively impact the ratepayers, who may as a consequence decide to drop out of the network system. Therefore, we respectfully request that the FCC devise a mechanism that will promote competitive and technological neutrality, but at the same time, ultimately benefit the consumers.

Respectfully submitted,

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